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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,788	11/20/2003	William P. Reiter	301.00020101	8585

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MUETING, RAASCH & GEBHARDT, P.A.
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EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/717,788	Applicant(s) REITER, WILLIAM P.	
	Examiner Jon A Szumny	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

This is the first office action for application number 10/717,788, Waste Container Stabilizer, filed on November 20, 2003.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14 and 16-20, drawn to a waste container stabilizer (and a waste container), classified in class 248, subclass 907.
- II. Claim 15, drawn to a waste container stabilizer and a pallet, classified in class 248, subclass 346.02.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the top surfaces of the legs are not required to have an arcuate shape complimentary to the support ring. The subcombination has separate utility such as being used and transported without a pallet.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

During a telephone conversation with Kevin Raasch on October 12, 2004 a provisional election was made without traverse to prosecute the invention of group I, claims 1-14 and 16-20. Affirmation of this election must be made by applicant in replying to this Office action. Claim 15 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

Domestic priority of application number 60/428,028 filed on November 21, 2002 is acknowledged.

Information Disclosure Statement

Receipt is acknowledged of Form PTO-1449, Information Disclosure Statement, which has been reviewed by the Examiner.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

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disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In line 1 of the abstract, "are disclosed" should be removed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication number 20040144901 to Nauseda et al. in view of U.S. Patent number 4,411,085 to Farmer and U.S. Patent number 3,648,659 to Jones.

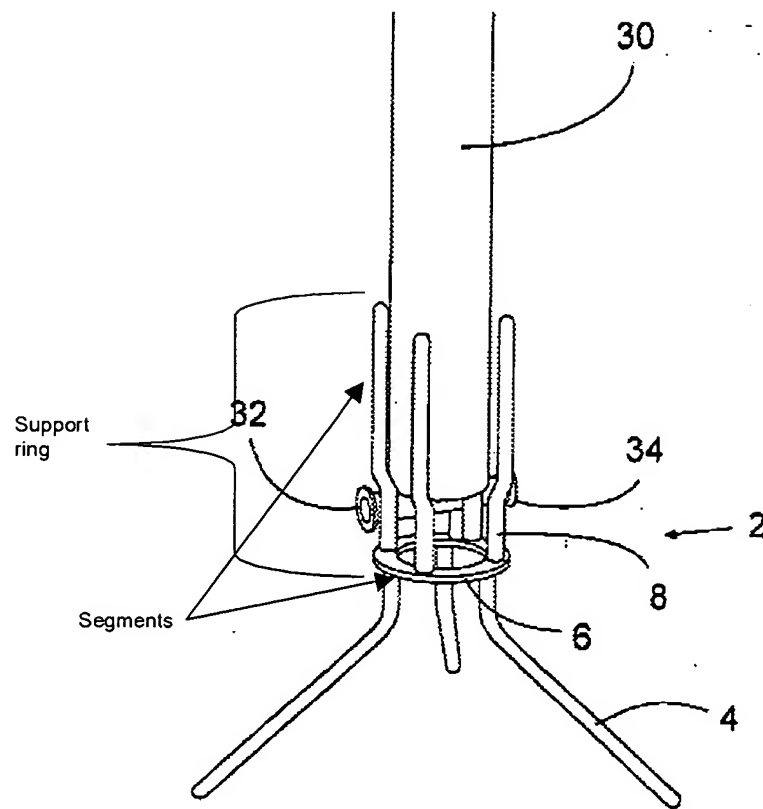


Figure 2

Nauseda et al. '901 discloses a stabilizer (above) comprising a support ring (above), and a plurality of legs (4), wherein each of the legs comprises a top surface (above) comprising an arcuate shape complementary to the support ring (see paragraph 44, the bottom of the support ring has a female threaded connection and the tops of each of the legs have a male threaded connection, so both of these connections are complementary arcuate surfaces), wherein rotation of each leg relative to the support is prevented when the leg is attached to the support ring (for instance, when the leg is rotated more after the threads are already fully engaged, or when the legs are rotated about an axis different than that of the threaded connections), wherein the

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support ring comprises a segmented support ring comprising a plurality of segments (above), wherein a container (30) is sized to fit within the support ring when the stabilizer assembly and the waste container are supported on a surface.

However, Nauseda et al. '901 fails to specifically teach at least two of the legs to each comprise a hollow ballast compartment with an opening filled with a ballast selected from sand, gravel, water, metal shot, concrete and combinations of two or more thereof, and fails to specifically teach the opening into the compartment to be covered by the support ring when the legs are attached to the support ring.

Nevertheless, Farmer '085 teaches the concept of filling a hollow ballast compartment in a leg of a stabilizer with ballast (column 3, lines 30-31), and Jones '659 teaches the concept of filling a leg (2) with ballast such as sand or gravel (column 3, line 11) via an opening (4) on the top of the leg, such that when the leg is attached to a support ring (3), the opening is covered. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified at least two of the legs of the stabilizer of Nauseda et al. '901 so as to each have a hollow ballast compartment filled with a ballast as in Farmer '085 so as to provide for a more stable stabilizer. Further, it would have been obvious to have constructed an opening into the ballast compartment on the top of each leg such that each compartment is covered by the support ring when the legs are attached to the support ring so as to provide for a more aesthetically pleasing stabilizer by concealing the openings. Finally, it would have been obvious to have used sand or gravel as the ballast as in Jones '659 since such are well known materials in the art for use as ballast materials.

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Regarding claims 16-20, Nauseda et al. '901 in view of Farmer '085 and Jones '659 inherently teach the method of manufacturing a stabilizer apparatus comprising forming the ring and the legs, wherein the ballast compartment is inherently filled with ballast before the legs are attached to the ring.

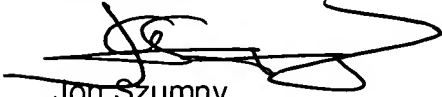
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuster '060, Nobeta '855, Harrington '807, Mallins '033, Adams, Jr. '527, Fritz '055, Michael '021 and Sherer et al. '379 teach various stabilizing apparatuses comprising rings and legs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
October 13, 2004